IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.919 OF 2004
IN
SUMMARY SUIT NO.1374 OF 2004

Padmavathi Exports ..Plaintiffs

Vs.

Jai Bhawani Trading Co. ..Defendants

WITH

SUMMONS FOR JUDGMENT NO.922 OF 2004
IN
SUMMARY SUIT NO.2547 OF 2004

Girish Nyalchand Matalia ..Plaintiffs

Vs.

Jai Bhawani Trading Co. ..Defendants

Mr.Pankaj Sawant a/w Mr.M.V.Gopal Krishna for the plaintiffs

Mr.G.B.Kedia for the defendants

CORAM : S.U.KAMDAR, J
DATED : 17TH OCTOBER, 2005

P.C.:

1. The present suit is filed on dishonoured cheques. It is the case of the plaintiffs that the said cheques are issued in consideration of amount lent by plaintiffs to defendants. Plaintiffs have

also relied upon Ex.A and B which are the acknowledgement of liability. The defence raised by the defendants is that documents at Ex.A and B are fabricated. In so far as cheques are concerned which are at Ex.C1 to C9, they are the cheques stolen by the plaintiffs and utilised by fabricating the signature thereon. It is his contention that the signature of the cheques also is not of the defendants. It is further the case of the defendants that no money has been received under the said cheques and therefore question of issuing cheque does not arise. In support of the aforesaid contention, the learned counsel has contended that in so far as Ex.A and B are concerned, originals are not available and xerox copies thereof indicates that the signature are ex-facie forgery. In respect of the aforesaid contention that the cheques which are not issued by him he contends that the signature thereof is not of the defendants. He also relies upon two memos by the bank indicating that the signature differs. Each of the said two memos also indicates that the said cheques are dishonoured for insufficient funds. All other cheques are dishonoured by the

Bank only on the ground that there is no sufficient fund and not on the ground that signature differs. However, in view of the aforesaid defence, I called upon the plaintiffs to produce the books of account and Income Tax Returns which they have produced which interalia indicates that in the relevant accounting year 2000-01 and in subsequent period the said amount has been shown as paid by plaintiffs to defendant in cash. Apart from the same I am of the opinion that on perusal the cheques which are duly signed by defendant it cannot be said that the said signature is forgery on the said cheques. Merely because the cheques are dishonoured on the ground that the signature differs cannot give any rise to the contention that the said cheques are forgery.

2. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs.5.0 lacs in each of the suit within 4 weeks failing which plaintiffs will be entitled to decree in the said suits. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any

Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suits to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suits to be on board of the learned Judge taking Commercial Causes.